



Paper No. 6

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APR 12 2002

OFFICE OF PETITIONS

In re Application of : NOTICE OF FEE DEFICIENCY,
Huitt, Bauman, Gubitose, and : NOTICE OF
Wieslaw : INCOMPLETE REPLY,
Application No. 09/917,183 : AND
Filed: 27 July, 2001 : DECISION REFUSING STATUS
Attorney Docket No. : UNDER 37 CFR 1.47(a)

This is a decision on the paper styled "Petition for Unavailable Inventors for the RF MULTIPLE LOAD CELL SCALE Patent Application No 09/917,183" filed on 8 January, 2002, which is treated as a renewed petition under 37 CFR 1.47(a).

The petition is dismissed.

NOTICE OF FEE DEFICIENCY

On 8 January, 2002, petitioners submitted \$710.00 in response to the Notice to File Missing Parts mailed on 13 September, 2001. However, the statutory basic filing fee became \$740.00 effective 1 October, 2001. Any fee paid on or after 1 October, 2001, must be paid in the revised amount. Petitioner is responsible for ensuring that the fee is submitted in the correct amount. Therefore, a deficiency of **\$30.00** is due and must be submitted with any request for reconsideration.

NOTICE OF INCOMPLETE REPLY

The present petition filed on 8 January, 2002,¹ in reply to the decision mailed on 28 September, 2001, which set a two (2) month period for reply is incomplete in that no extension of time was filed therewith. The period for reply remains as set forth in

¹It is noted that the petition says that it was [s]igned ... this 13th day of November, 2001." As the petition does not contain a certificate of mailing in accordance with 37 CFR 1.8, the actual date of receipt will be used.

the decision mailed on 28 September, 2001. **FAILURE TO FILE A TIMELY RESPONSE WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time are available under 37 CFR 1.136(a).

While issues pertaining to acceptance of an incomplete reply are moot, in the interests of facilitating prosecution and conservation of PTO resources, the petition under 37 CFR 1.47(a) will be discussed on its merits.

PETITION UNDER 37 CFR 1.47(a)

The above-identified application was filed on 27 July, 2001, with a declaration naming Bruce Huitt, Kenneth Bauman, Christopher Gubitose, and Mroz Wieslaw as joint inventors and signed by joint inventor Gubitose on behalf of himself and the other joint inventors. The petition filed with the application papers on 27 July, 2001, was dismissed out of hand on 28 September, 2001, because the petition fee had not been submitted. The present renewed petition is accompanied by the petition fee.

Petitioners assert that joint inventors Huitt and Wieslaw are unavailable for signature of the declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks items (1) and (2).

In regards to item (1), petitioners have not shown that diligent efforts have been made to locate the non-signing inventors.² Petitioners should send or give a copy of the application papers to the non-signing inventors for review, with a request that the

²MPEP 409.03(d).

inventors sign and return the declaration. Petitioners may show proof by providing a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

If the inventor(s) refuse in writing to sign the declaration, petitioners should supply a copy of that written refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

Alternatively, if the application is returned as undeliverable by the post office, petitioners should submit a copy of the envelope showing that a letter sent to the last known address of the non-signing inventor was returned as undeliverable by the post office. Details of the efforts made to locate the non-signing inventor should be set forth in an affidavit or declaration of facts by a person having first hand knowledge of the details.

In regards to item (2) the declaration filed on 27 July, 2001, is defective in that it (a) contains uninitialed/undated alterations for joint inventors Huitt and Bauman, and (b) lacks the citizenship for joint inventor Wieslaw. With regard to joint inventor Huitt, there are initialed but undated alterations to the residence and mailing address for this inventor. As Huitt did not sign the declaration, it is unclear who initialed the changes in his signature block. In any event, a new oath or declaration containing the correct information for joint inventor Huitt and signed by all of the signing inventors must be provided.

With regard to joint inventor Bauman, it is noted that Bauman's signature block has been crossed-out, and "no longer with the company" is written in the margin next to Bauman's signature block. 37 CFR 1.41(a)(1) now defines the inventorship of a non-provisional application as that inventorship set forth in the oath or declaration filed to comply with the requirements of 37 CFR 1.63. As such, Bauman is a joint inventor of this application. If it has since been determined that Bauman is not a joint inventor of this application, a petition under 37 CFR 1.48 should be filed to amend the inventive entity by deleting Bauman as an inventor. Furthermore, an oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by 1.42, 1.43, or § 1.47 is required.

Lastly, the declaration supplied with the application papers also lacks the citizenship of joint inventor Wieslaw.³ A statement of the inventor's citizenship is a statutory requirement and cannot be waived.⁴

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.



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³MPEP 605.01.

⁴35 U.S.C. § 115, MPEP 605.01.